

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.265 OF 2005

Subodh Dinanath Rangnekar

...

Petitioner

Vs.

Nitin Chandulal Bhansali

...

Respondent

Mr. G.R. Nadkarni for the petitioner.

Mr. Chandrakant Chavan for the respondent.

CORAM: SMT. RANJANA DESAI, J.

DATED: 1ST MARCH, 2005.

P.C.:-

1. The petitioner is the original defendant in R.A.E. & R. Suit No.516/1015 of 1997. The suit is for eviction, inter alia, on the grounds of arrears of rent and change of user. In this suit, the plaintiff took out Interim Notice No.5642 of 2003 praying that notice be issued to the defendant asking him to show cause why the written statement dated 13/4/1999 filed by the defendant should not be struck off as the defendant has failed to comply with the scrutiny order dated 31/7/2003.

2. By the impugned order dated 14/12/2004, the trial court has made the notice absolute. The trial court has directed the defendant to pay the amount as directed by the court in the said scrutiny order dated 31/7/2003 within four weeks from the date of that order. The trial

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court has further ordered that on failure to comply with the said direction, the defendant's right to defend will be struck off and he will be debarred from appearing in the suit. This order is challenged in this writ petition.

3. I have heard, at considerable length, Mr. Nadkarni, the learned counsel appearing for the petitioner. He contended that the impugned order suffers from patent illegalities and is liable to be set aside. He submitted that the plaintiff has described the defendant as intermeddler and trespasser. Therefore, there is no relationship of landlord and tenant between the two and, therefore, the suit itself is not maintainable. The learned counsel further submitted that the plaintiff has not served any notice on the defendant and, therefore, such a suit is bad in law. Mr. Nadkarni, further contended that in any event, the trial court could not have directed the defendant to pay such an exorbitant amount of rent. The learned counsel contended that in view of this, the impugned order be set aside.

4. I am unable to agree with the learned counsel. It is necessary to note a few facts to appreciate the case of the parties. Interim Notice No.6003 of 1999 was taken out by the defendant praying that maintainability and jurisdiction be decided as a preliminary issue. On 17/7/2001, that notice was discharged. Admittedly, this order was not challenged by the defendant. On 31/7/2003, the trial court passed the scrutiny order. The trial

court noted that the defendant was present in the court. The trial court ordered the defendant to deposit in the court a sum of Rs.1,02,782.20ps. upto 30/6/2003 and continue to deposit from August, 2003 an amount of Rs.633.75ps. towards the arrears of rent and repair cess. It appears from the order that the defendant expressed his inability to pay the amount in lumpsum. Therefore, the trial court directed the defendant to deposit monthly instalment of Rs.25,000/- each payable on 10th day of every month from August, 2003. The trial court ordered that the amount, as and when deposited, be paid over to the plaintiff. Therefore, the defendant accepted the scrutiny order; asked for instalment and did not challenge that order. Thereafter, the defendant took out another notice being Interim Notice No.4448 of 2003 again praying that maintainability and jurisdiction of the court be decided as a preliminary issue. On 19/11/2003, that notice was discharged after observing that similar notice was taken out by the defendant and was earlier discharged. The defendant filed Civil Revision Application No.11 of 2004. The Division Bench of the Small Causes Court dismissed the same on 29/1/2004. The defendant filed a writ petition in this court being Writ Petition No.2647 of 2004. On 27/4/2004, this court dismissed the said writ petition observing that even earlier notice taken out for the same purpose was dismissed by the trial court. The plaintiff then took out instant Interim Notice No.5642 of 2003, which has been made absolute by the trial court.

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5. In my opinion, in the aforementioned facts and circumstances, the trial court cannot be faulted for having made the notice absolute. The order may appear to be harsh but, it is not so. The learned judge has merely stated that the defendant should pay the amount within the time frame laid down by it, failing which the defendant's right to defend would be struck off. As observed by me earlier, on 31/7/2003, the defendant was present in the court; he asked for instalment and did not challenge that order. Moreover, the defendant took out another notice No.2135 of 2004 praying for reduction of amount of monthly instalment. That again shows that the defendant accepted the court's order. However, the defendant went on taking out the notices for trying issues of maintainability and jurisdiction as preliminary issues. In my opinion, the defendant has shown total disregard to the orders passed by the trial court which he has, in fact, accepted on two occasions. Again an effort was made to argue before me that the Small Causes Court has no jurisdiction. In that connection also one notice was taken out, which was discharged. That order was not challenged. The second notice was challenged in the High Court. The High Court dismissed the petition.

In such circumstances, when the scrutiny order is clearly flouted, no leniency can be shown to the defendant.

6. Hence, the writ petition deserves to be rejected and rejected as such.

(SMT. RANJANA DESAI, J.)